Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Revision of Procedures Governing	)	
Amendments to FM Table of Allotments and	)	MB Docket No. 05-210
Changes Of Community of License in the	)	RM - 10960
Radio Broadcast Services	)	

To: Office of the Secretary

COMMENTS

APEX BROADCASTING, INC.
ALEXANDER BROADCASTING CO., INC.
CHARLES M. ANDERSON & ASSOCIATES
CUMULUS LICENSING LLC
GREAT SOUTH RFDC, LLC
HUNT BROADCASTING, INC.
MARATHON MEDIA GROUP, LLC
MEDIA SERVICES GROUP
MULTICULTURAL RADIO BROADCASTING LICENSING, LLC
SPANISH PEAKS BROADCASTING, INC.
WAGON WHEEL BROADCASTING, LLC

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October 3, 2005

TABLE OF CONTENTS

SUMMARY

The Parties filing these Comments are radio station licensees, broadcasters, and consultants who are active in the filing of petitions for rule making to improve station signal coverage. The Parties agree that the Commission's allocations processes are badly in need of overhaul. The Parties strongly support adoption of the two main proposals advanced by the Commission to streamline the allocations processes.

First, the Commission should permit AM and FM stations to change community of license by minor modification application. The majority of FM rule making proceedings are straightforward community changes that can be accomplished by application, removing a substantial amount of the workload currently facing the allocations staff. The Commission has demonstrated its ability to evaluate the necessary public interest showings pursuant to Section 307(b) of the Communications Act in an application context. Both AM and FM applications to change community of license can be classified as minor modifications consistent with the Commission's responsibilities under Section 307(b).

Second, in connection with the filing of a petition to amend the FM Table of Allotments, the Commission should require that an application on Form 301 and rule making filing fee accompany each request. This change is consistent with the statutorily mandated filing fee for a petition requesting a new community. It would also help deter frivolous petitions, and allow the staff to focus on processing bona fide petitions.

The Parties strongly disagree with the imposition of any numerical limit on the number of communities in a petition for rule making. Such a limit is unnecessary given the other procedural reforms proposed in this proceeding. It also is unjustified by the facts, given that petitions involving a large number of communities are relatively infrequent. The Parties'

research indicates that over a five-year period, only 3.3 percent of all Reports and Orders involve more than five station changes. In absolute terms, the number of such petitions is only approximately three per year. When the majority of filings are removed from the rule making process as a result of the implementation of the other proposals in this proceeding, the Allocations staff should be well equipped to handle the few cases that involve more than five station changes. It is unlikely that the number of such petitions will increase, because the filing fees for each station change will make these petitions much more expensive.

On the foregoing basis, the Parties support the proposed changes as a package. The Parties consider these changes to be procedural, and have not commented on any substantive changes to the Commission's rules. The Parties expect that any substantive changes that may be contemplated will be set forth in another proceeding.

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COMMENTS

Alexander Broadcasting Company, Inc., Apex Broadcasting, Inc., Charles M. Anderson & Associates, Cumulus Licensing LLC, Great South RFDC, LLC, Hunt Broadcasting, Inc., Marathon Media Group, LLC, Media Services Group, Multicultural Radio Broadcasting Licensing, LLC, Spanish Peaks Broadcasting, Inc., and Wagon Wheel Broadcasting, LLC (collectively, the "Parties") by their counsel, hereby submit their Comments in the above captioned proceeding. *See Notice of Proposed Rule Making*, 70 Fed. Reg. 44537 (2005) (*NPRM*). The parties support the two primary proposals set forth in the *NPRM*, which are designed to improve the Commission's procedures with regard to changing the communities of license of FM and AM stations, and to impose filing fees when a rule making petition is filed. The Parties are strongly opposed to a limit on the number of changes that can be proposed in a petition or counterproposal as contrary to the public interest and unjustified by the Commission's rationale. In support hereof, the Parties state the following:

I. INTRODUCTION

1. The Commission's stated purpose in commencing this proceeding was:

> to reduce backlog in, and streamline, our FM allotment procedures and certain procedures pertaining to. . . AM applications. . . .

> Given the backlog of pending rule making proceedings to amend the Table, the large disparity in processing time frames between applications and allocation proposals and the increased demands now being placed on the staff. . . , we believe it is critically important to implement streamlined procedures in this area as well."[1]

2. The Parties agree that it is critically important to streamline the Commission's procedures in distributing the AM and FM frequencies pursuant to the Commission's 307(b) mandate. The Commission has offered to make two changes to its procedural rules to accomplish the reduction in allocations backlog and processing time periods. These two proposals – first, permitting changes in community of license by minor change application, and second, imposing filing fees at the time of filing a rule making proposal – are essential steps to accomplish the desired procedural improvements. The Commission should adopt these proposals. It is important that both proposals be adopted as a package. Otherwise the Commission could merely succeed in shifting backlogs from place to place, or in increasing both the allocation and application processing backlogs, and the desired streamlining effects will not be achieved. However, the Parties strongly object to the proposed limit on the number of FM channel additions or substitutions that may be included in a rule making proposal. The imposition of a limit is unsupported by the rationale offered by the Commission, and contrary to its responsibility under Section 307(b) as will be discussed herein.

3. In considering the comments in this proceeding, the Commission should maintain its narrow focus only on ***procedural*** rule changes and not on substantive allocation policies. In this regard, the Commission has already rejected several proposals offered in previous comments by the petitioner and other parties in this proceeding, because they were not strictly procedural matters designed to improve the processing of allocations requests. The goal in this proceeding

[1] *NPRM* at ¶1.

is *not*, as some commenters have implied, to make it easier to relocate rural stations to more lucrative urban markets. Rather, the goal in this proceeding is to make it easier to accomplish just those allocations changes currently permissible under the Commission's substantive rules.

II. COMMENTS ON THE PROPOSED RULE CHANGES

A. The Commission Should Adopt its Proposal to Permit an AM or FM Station to Change Community of License Through a Minor Modification Application.

4. The Commission proposes to permit an AM or FM station to change its community of license by minor modification application rather than by rule making.[2] Section 73.202(b) of the Commission's Rules lists FM channel allotments by community and state. Currently, a licensee of an FM station desiring to change its community of license must file a petition for rule making to amend the FM Table of Allotments, followed by an application to implement the change in community of license after the rule making petition is processed and granted. The routine use of this two-step process to change the communities of license of one or more stations accounts for the majority of FM allotment proceedings. Allowing these changes to be accomplished by application would by itself dramatically decrease the burden on allocations processing staff. It would also reduce the delays and uncertainty that currently plague the rule making process.

5. The Commission already permits certain amendments to the FM Table of Allotments to be accomplished by application. Under the "one-step" procedures, an FM licensee may apply for an adjacent channel or a change in class as long as the change is mutually

[2] *NPRM* at ¶¶14-29.

exclusive with the existing facilities.[3] When such an application is granted, the rule changes take effect upon publication in the Federal Register.[4]

6. There is no reason that FM community of license changes cannot also be accomplished by application. The Commission currently permits an AM licensee to change its community of license by application. The Commission is able to make the public interest determination under Section 307(b) pursuant to existing rules and policies by requesting an exhibit which discusses the requirements needed to justify the change in community of license. Such analysis can be made in connection with the processing of an application just as is currently performed in the rule making context. During the AM filing window which closed on February 1, 2000, the Commission entertained many change in community of license applications, each of which contained the showing that is required under Section 307(b). The Commission was able to make the comparative analysis under its existing policies and precedent without formal rule making procedures. Clearly, the Commission has the experience and the ability to evaluate Section 307(b) showings in the application context.

7. AM applications to change community of license are classified as major modifications and can only be filed in a designated filing window.[5] Classifying these requests as minor modifications would eliminate the opportunity for conflicting applications. But the AM band is mature, and the opportunity for filing for new communities of license has been available in varying degrees during the last 40 years. Allowing these modifications by the filing of a minor modification application will add certainty and reduce administrative delay, to the benefit of both the industry and the Commission. The public will continue to be able to participate in

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3 *See Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application,* 8 FCC Rcd 4735 (1993) ("*FM Channel*").

4 *Id*. at 4737 n.18.

5 *See* 47 C.F.R. § 73.3771(a).

community changes. Under existing Commission rules, comments can be filed on an informal basis at any time prior to action on the application but in no event less than 30 days after public notice.

8. Currently up to four stations can file contingent applications under Section 73.3517(e) of the Commission's Rules. This limit was arbitrary when it was initially adopted. It was simply a way for the Commission to gain experience with the contingent application process without placing its own ability to control the process at risk. Having gained more than five years' worth of experience with the contingent application rule, the Commission should raise or remove the limit now. While the organizational work that the applicants put into assembling a large group of contingent applications is significant, the Commission's task is to assess the grantability of each application assuming the others are granted. This task does not increase in complexity when a large group of applications is presented. It is the same complexity that would be present if the applications were individually filed.

9. If the Commission elects to retain a numerical limit on the number of contingent applications that can be filed, it is important that it not place a limit on the number of changes that can be made in a rule making proposal.[6] For example, if the Commission permitted only four contingent applications to be filed in one group, then any beneficial arrangement of allotments that could not be achieved without more than four contingent changes would have to be submitted as a rule making proposal. In this regard, the Parties note that the Commission has proposed to eliminate the FM Table of Allotments from the rules but retain the Table itself and the process for amending the Table.[7] If, as a result of this proceeding, community changes may

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[6] In addition, as discussed *infra*, Section II.E, changes to vacant allotments and involuntary channel changes with no change in transmitter site should not count towards a numerical limit.

[7] *NPRM* at ¶¶ 29, 39.

be made by application but a numerical limit on contingent applications remains, then the petition process is the *only* way that proposals involving more than the limit can be submitted for processing in order to achieve Section 307(b) benefits. As discussed below, the Commission cannot simply turn away beneficial proposals because they are too "complex." Doing so would elevate the Commission's interest over the public interest. Moreover, even if "complexity" were a valid concern, the connection between the number of changes proposed and the "complexity" of the rule making proceeding is far from clear.

B. The Commission Should Not Arbitrarily Limit the Number of Changes that May be Proposed in One Proceeding.

10. The Commission should not limit the number of changes that may be proposed in one proceeding. Adoption of such a proposal would prohibit the achievement of many beneficial arrangements of allotments, contrary to Section 307(b). Moreover, the adoption of such a proposal is not supported by the rationale given by the Commission.

11. As an initial matter, the Commission has overstated the burden presented by larger proposals. In fact, proposals to amend the FM Table of Allotments that involve five or more changes to the Table represent a small percentage of the allotment proceedings considered by the allocations staff. In order to demonstrate this fact, counsel for the Parties reviewed the allocations orders released by the Bureau over the past four and one half years. The results of this research are summarized in the following table.

YEAR	TOTAL NUMBER OF R&Os[8]	NUMBER OF R&Os WITH 5 OR MORE CHANGES TO THE TABLE	PERCENTAGE OF R&Os WITH 5 OR MORE CHANGES TO THE TABLE
2001	110	3	2.7%
2002	109	3	2.7%
2003	116	2	1.7%
2004	92	7	7.6%
2005 (to date)	80	2	2.5%
TOTAL	**507**	**17**	**3.3%**

12. In addition to overstating the burden placed on the allocation staff, the Commission's proposal to limit the number of changes to the FM Table of Allotments to five would also harm the public interest by prohibiting many beneficial arrangements of allotments. For example, in *Farmersville, Texas, et al.*, the Commission allotted a first local service to Flower Mound, Texas, a Class C allotment that could not have been achieved without changes to seven other radio stations. 12 FCC Rcd 4099 (1997). The Commission held that these changes brought "significant public interest benefits." *Id.* at ¶ 7. These public interest benefits would not have been possible had an arbitrary limit of five channel changes been imposed. Other cases involving more than five changes to the Table have resulted in substantial public interest benefits

[8] Searches were performed on (i) the Commission's EDOCS web site, (ii) Westlaw, and (iii) Pike and Fischer's Communications Regulation Online. The three data bases showed close agreement in the numbers of *Report and Orders* each year (however, EDOCS is incomplete for 2001 and 2002). The numbers shown are taken from the results of the Westlaw search. Counsel believes that these numbers actually understate the number of Media Bureau actions, based on conversations with the Commission's staff. Counsel's totals only include *Report and Orders* and do not count individually the dockets contained in some *Report and Orders*. For example, if each docket number was included as a separate action, the number of actions taken in 2005 (to date) would total 140 rather than 80. This higher figure would significantly decrease the percentage of cases per year that involve 5 or more changes to the Table.

as well. For example, the Bureau's decision in *Georgetown, Mason, Oxford and West Union, Ohio, and Salt Lick, Kentucky* resulted in the provision of first local services to two communities and a net gain in population served of almost 700,000 persons.[9] In *Dinosaur, Colorado, et al.*, the Bureau granted a proposal that resulted in the provision of first local services to three communities and a net gain in population served of over 1,000,000 persons.[10] In *Crowell, Texas, et al.*, the Bureau granted a proposal that resulted in the provision of first local services to four communities, a net gain in population served of over 1,600,000 persons, and the provision of a third, fourth, and fifth service to underserved areas.[11] Finally, in *Ardmore, Alabama, et al.*, the Bureau granted a proposal that resulted in the provision of first local services to four communities.[12] These are just a few examples of proposals involving five or more changes to the Table that have substantially benefited the public interest under 307(b). None of these proposals would have been grantable if an arbitrary limit on the number of proposals existed at the time they were proposed. Many millions of listeners enjoy the signals from these radio stations today, but would have been deprived of these radio services under the Commission's proposed rule.

13. Because it would have the effect of excluding certain beneficial arrangements, a numerical limit violates Section 307(b) unless it can be justified by reference to some equally compelling public interest reasoning. However, the Commission fails utterly to justify the rule. The Commission states that requests involving a large number of stations "demand enormous amounts of staff time." *NPRM* at ¶ 35. However, the amount of time the staff spends processing rule making proposals does not depend on the number of communities per proposal. There is

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9 20 FCC Rcd 12976 (2005).

10 19 FCC Rcd 10327 (2004).

11 19 FCC Rcd 5347 (2004).

12 17 FCC Rcd 16332 (2002).

nothing inherently more demanding about a single proposal involving six stations than six individual proposals. For example, the six stations could be owned by the rule making proponent, making the processing and implementation a cooperative effort, and virtually identical to that of six individual proposals. This was, in fact, the case in *Dinosaur, Colorado, et al.*, 19 FCC Rcd 10327 (2004), in which the proposal to allot a first local service at Coalville, Utah involved six stations, all owned by the joint rule making proponents. Therefore, the proposed rule is overinclusive, because it would bar many beneficial proposals that do not place significant additional burdens on the staff.

14. At the same time, the proposed rule is severely underinclusive, because it would *fail* to bar many rule making proceedings that demand enormous amounts of staff time. For example, a simple rule making proposal may attract a large number of counterproposals, none of which by itself crosses the Commission's arbitrary threshold. *See, e.g., Hawesville, Kentucky, et al.*, 6 FCC Rcd 6473 (1991) (6 communities in two counterproposals). Alternatively, a number of separate rule making proposals filed by unrelated petitioners may be consolidated into a single proceeding because of interrelationships between the proposals. *See, e.g., Bay Minette, Alabama, et al.*, 6 FCC Rcd 6012 (1991) (6 communities in four separate petitions). Or, a combination of these factors may entangle proposals involving large numbers of communities. *See, e.g., Perry, Florida, et al.*, 4 FCC Rcd 5599 (1989) (11 communities in two proceedings with numerous counterproposals). Each of these proceedings was difficult to resolve, yet none would have been affected by the proposed numerical limit on a single proposal.

15. Not only does the proposed rule fail to address the perceived problem, but to the extent the staff are overburdened with rule making proposals, the adoption of the other proposals in this proceeding will dramatically decrease that burden. Allowing community changes by

application will, by itself, remove the majority of rule making proposals from the allocations staff. A large reduction in the number of petitions will also result from the imposition of filing fees. The whole concept behind this proceeding was to help streamline the allocations process and alleviate the staff workflow issues. Therefore, it remains to be seen whether there is even a problem to be addressed once this proceeding is resolved. At the very least, the Commission should gain experience with the new rules to be adopted in this proceeding to streamline allocations processing before it introduces an arbitrary numerical limit on the number of communities in a proposal.

C. The Commission Should Require Payment of the Rule Making Filing Fee When the Petition or Counterproposal is Filed Rather Than When Granted.

16. The Commission should adopt its proposal to require a filing fee at the time of filing any petition for rule making to amend the FM Table of Allotments. It may implement this proposal by requiring that a rule making proponent submit an application on Form 301 containing the technical showing for each new community of license proposed, and requiring that the payment of the rule making filing fee accompany the application. The Commission not only has the authority to do so, it is ***required*** to do so under the Communications Act. Its authorization to collect a filing fee is found in the plain language of Section 8 of the Communications Act, which sets forth the fee for a "Petition for Rule Making for New Community of License or Higher Class Channel."[13] The fees listed in Section 8 are mandatory, not optional. Section 8 states that the Commission "shall" assess these fees.[14]

17. The Commission's current practice is contrary to its statutory mandate. Section 8 of the Communications Act requires the Commission to assess and collect "application" fees,

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13 47 U.S.C. § 158(g).

14 47 U.S.C. § 158.

and contains a schedule of fees for "applications" in various services.[15] However, contrary to the plain words of the statute, the Commission does *not* assess a fee on the filing of a petition for rule making. It assess the fee *only if the petition ultimately succeeds*.[16] Moreover, the Commission assesses the fee only in the cases of petitions to change an existing allotment, not to add a new allotment.[17] There is no justification for this interpretation, and it has had an adverse effect on the Commission's processing burden. Just as the Commission assesses a filing fee for an application on Form 301 regardless of the ultimate disposition of the application, it should assess a fee for a petition for rule making regardless of the ultimate disposition of the petition. It should also assess a fee on all categories of petitions that fall within the mandatory fee collection statute, and not arbitrarily exclude certain petitions.

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15 *Id.* The statutory use of the term "application" in connection with one-time fees is generic, and does not prescribe the use of any specific form by the Commission. The statute originally referred to "charges," rather than "application fees." *See* Pub. L. No. 101-239, 101st Cong., 1st Sess., 103 Stat. 2126 (1989). The provisions at issue – those requiring the Commission to assess and collect charges for certain petitions to amend the FM Tables of Allotments – were originally set forth under a schedule of "charges" to be assessed and collected by the Commission. *Id.* The term "charges" clearly can encompass rule making filing fees as well as application filing fees. In 1993, Section 9 of the Communications Act was added to provide for the assessment and collection of regulatory fees. *See* Pub. L. No. 103-66, 103rd Cong., 1st Sess., 107 Stat. 400-01 (1993). Regulatory fees fall under the category of "charges," too, so some means of distinguishing between the one-time charges of Section 8 and the recurring charges of Section 9 was necessary. Therefore, Congress changed the term used in Section 8 from "charges" to "application fees" and titled Section 9, "regulatory fees." That wording change did not remove from the schedule in Section 8 fees for services that are not strictly associated with "applications." There are a number of such services, including requests for special temporary authority, hearing designation fees, tariff filings, and special relief petitions, in addition to allotment petitions. *See* 47 U.S.C. § 158(g). Indeed, the Commission itself refers to the fees collected under Section 8 of the Act as "application *and other* filing fees." *See, e.g.*, 47 C.F.R. § 1.1104; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1107 of the Commission's Rules*, 15 FCC Rcd 17615 (2000).

16 *See Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, Memorandum Opinion and Order*, 5 FCC Rcd 3558, 3659-60 (1990) ("*Fees II*"), *recon.*, 6 FCC Rcd 5919 (1991) ("*Fees II Recon*"). *See also* Mass Media Services Application Fee Filing Guide at pp. 14 n.5, 15 n. 11 (Sept. 1, 2000) ("Application Fee Filing Guide"). Payment of the fee is due when an application on Form 301 or 302 is filed, and is in addition to the fee required for the application.

17 Application Fee Filing Guide, *supra*.

18. Nothing in the statute prohibits the assessment of fees on petitions to add a new allotment as opposed to those seeking changes to existing allotments.[18] The statute requires the assessment of a fee on a "Petition for Rulemaking for New Community of License." A petition requesting a new allotment literally requests a new community of license, since the requested channel is not associated with *any* community of license before its allotment. The Commission's narrow interpretation to petitions filed by existing licensees first appeared without comment in an appendix to its order implementing the amendments in which the rule making fees were added to the fee statute.[19] The legislative history does not offer any indication that petitions for new allotments were intentionally excluded.[20] The most reasonable interpretation of the limiting language is that Congress wanted to avoid imposing a general fee on *all* rule making proceedings.[21] The processing of a petition for a new allotment is not different in any material respect from the processing of a petition to change an existing allotment, since the petitioners must make the same showings regarding the eligibility of the new community. Given that the statute is designed to recover the costs of application processing (as discussed below), the two processes are virtually indistinguishable.

19. Congress designed the application fee structure to recover the costs of processing applications from the public.[22] The fee structure is based on the cost of regulation.[23] That is, the filing fee accompanying a given application is designed to match as closely as possible the cost

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18 Note that if the proposal to permit a change in community of license by minor change, Section II.A, *supra,* is granted then there will be fewer rule making proceedings initiated to change community of license.

19 *See Fees II*, 5 FCC Rcd at 3659 (¶¶ 64, 70), *supra.*

20 *1989 House Report* at 545-46, 588-89, *reprinted in* 1989 U.S.C.C.A.N. 2266-67, 2310-11; *1989 Conference Report* at 433, *reprinted in* 1989 U.S.C.C.A.N. 3036.

21 *See Fees II Recon*, 6 FCC Rcd at 5925 (holding that rule making fees are not an "unconstitutional tax on the ability of the public to participate in the process of government").

22 H. Rep. No. 101-247, 101st Cong. 1st Ses. at 588, *reprinted in* 1989 U.S.C.C.A.N. 1906, 2310 ("*1989 House Report*"); H. Conf. Rep. No. 101-386, 101st Cong., 1st Sess. At 433, *reprinted in* 1989 U.S.C.C.A.N. 3018, 3036 ("*1989 Conference Report*").

23 *1989 House Report* at 546, 1989 U.S.C.C.A.N. at 2267.

of processing that application.[24] This cost-matching approach has two beneficial effects. First, it provides a source of funding for the agency's day-to-day activities. Second, and more importantly, it gives applicants the incentive to use the "right amount" of Commission resources. If application fees were set too high, applicants would be discouraged from filing and the public would be deprived of potentially valuable services that could have been provided. On the other hand, if application fees are set too low, frivolous or speculative filings are encouraged and the Commission must divert resources away from more productive uses. This is exactly what happened when the Commission ignored its statutory mandate.

20. By assessing a filing fee only after a rule making proposal is granted, the Commission is in effect permitting the filing a petition for rule making for free. Moreover, filing a proposal to modify an existing allotment is virtually free – no fee at all is assessed upon its *filing*, only upon its success. As a result, speculative filings are encouraged, since speculative filings are less likely to succeed, and thus are less likely to incur a fee. Two predictable effects have resulted. In FM rule making proceedings, where many proceedings are contested and do not result in an automatic allotment to the petitioner, the Commission is flooded with rule making petitions for which no fee is ever paid and no cost is ever recovered. Second, the Commission's processing staff is chronically understaffed and backlogged, and the processing of *bona fide* allotment proceedings is unavoidably delayed. It is no surprise that these problems have occurred – they were virtually ***guaranteed*** to occur given the Commission's failure to assess the proper filing fees.

21. The solution to these problems is simple. The Commission should assess the statutorily mandated filing fee for a proposal to amend the FM Table of Allotments upon the

[24] *Fees II*, 5 FCC Rcd at 3574 ("We have worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing.").

filing of the proposal rather than when the implementing application is filed. Specifically, the Commission should require that a rule making proponent proposing a change in an existing community of license or a new allotment file an application on Form 301 containing the technical proposal. The statutorily mandated rule making fee should be assessed at the time of filing. The successful rule making proponent would continue to pay the Form 301 filing fee set forth in the rules for a new or major change construction permit at the time of filing that application.

22. A rule making proponent proposing changes at more than one community should be required to file an application on Form 301, and pay the rule making filing fee, for *every* community in its proposal. This interpretation is consistent with the statutory language requiring a filing fee for a new allotment. It also helps to deter proposals that involve a large number of communities, because of the substantial filing fees involved. As a result, the Commission has even less reason to consider imposing a numerical limit on the number of communities in a rule making proposal. *See* discussion, *supra*. The process would become self-policing.

D. The Commission Should Adopt its Proposal to Permit Electronic Filing of Petitions, Counterproposals, and Comments in Allotment Proceedings.

23. Electronic filing has proved to be efficient and reliable in nearly all Commission proceedings. These benefits should be extended to allotment rule making proceedings. However, the electronic filing system should contain a specialized form for capturing the technical information necessary to amend the Table of Allotments, namely: the proposed community, the channel and class of the proposed allotment, and the coordinates of the proposed transmitter reference point. A proposal that is not accompanied by complete information regarding all of its allotment changes should be subject to dismissal.

E. Additional Questions and Proposals.

24. The Commission asks at paragraph 27, whether "non-minor changes to the Table, e.g., vacant allotment channel substitutions or reference coordinate changes and involuntary channel changes to existing facilities" may be made by application. The Parties see no reason why reference coordinate changes should not be proposed as part of a minor change application since such changes do not require amendments to the Table. The Commission protects vacant allotments at the reference point created during the rule making process until a filing window is open and an application for the allotment granted.[25] Occasionally, a vacant allotment precludes another beneficial spectrum change, but the spectrum change could be accomplished if the vacant allotment specified a different reference point. However, it is not now possible to change only the allotment reference point. To change the allotment reference point, it is necessary to file a rule making proposal which must include other changes to the FM Table of Allotments. The length of time between an allotment and a window filing period has been lengthy, with over 800 vacant channels remaining at this time. Many stations are unable to improve their facilities by what would otherwise be a minor change application filing, and some not at all, unless the station is able to file pursuant to one of the Commission's short spacing rules (Section 73.213 or 73.215) to protect a vacant allotment reference point. In those instances, many improvements in facilities cannot be realized.

25. To avoid the delays or avoid risking no improvement at all, the applicant should be able to routinely propose a reference point change for a vacant allotment without a rule making proceeding. The new reference point must simply comply with 73.207 spacing rules and 73.315 principal community coverage rules. Since no change to the FM or TV Table is involved

[25] *Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 13 FCC Rcd 15920, 15991 (1998), *clarified*, 14 FCC Rcd 8724 (1999), *aff'd*, 213 F.3d 761 (D.C. Cir. 2000).

in a change of coordinates for a vacant channel, there is no need for a rule making proceeding. This procedure could also eliminate the filing of some unnecessary rule making petitions.

26. Vacant allotment channel substitutions and involuntary channel substitutions with no accompanying transmitter site change should not count toward any imposed limit that may be placed on the number of contingent applications that may be filed together. These types of changes are relatively simple to process, and as such, should not count towards any numerical limit.

27. At paragraph 28, the Commission asks whether additional safeguards should be imposed to deter the movement of stations from rural to urban areas. The Parties believe that the questions asked in this paragraph concern substantive allocation policies. However, the desire to reduce the allocations backlog and speed service to the public should not become a subterfuge for making major changes to existing substantive laws. There is no record justifying deterrent measures to restrict station moves. Indeed, it is the experience of the Parties, who are active in this area, that moves into urbanized areas are relatively rare due to the scarce spectrum available in such areas. The Commission should resist its momentary impulse to convert this proceeding into a major overhaul of substantive allocations policies.

28. Underlying this question is the concern that rule changes streamlining the allocations process will accelerate the removal of broadcast service from rural areas in favor of large urban markets. This fear is unfounded if the Commission retains its substantive rules that currently guard against such wholesale migration. Moreover, the truth is that urban "move-ins" often create more rural broadcast opportunities than originally existed. For example, if a rural Class C allotment is downgraded to a lower class and relocated closer to an urban center, it leaves a large spectrum gap where several new rural broadcast services can be located. Such

new services have been created in the aftermath of large rearrangements of the Table of Allotments. Unfortunately, because they are not part of the original proceeding, they are not seen to be associated with that proceeding, yet these new rural services would not have been possible without the preceding spectrum changes.

29. At paragraph 29, the Commission asks whether it "should remove the Table from the Commission's rules and henceforth allocate existing FM stations among communities solely through adjudicatory proceedings." The Parties appreciate the Commission's open mind, and agree that inquiries along this line may lead to beneficial changes. However, the Commission has offered no information beyond mere musings. There is simply not enough substance to comment on. The Commission does not explain what benefits would ensue from removing the Table from its Rules. Perhaps it is nothing more than an effort to eliminate certain paperwork burdens such as publication of the notice and the actions taken in the Federal Register. Or, perhaps it is an effort to make substantive policy changes. The Commission does not explain. Nor does the Commission explain what substitute procedures it would implement to allocate new channels. The Parties urge the Commission to institute a new proceeding in which it gives some consideration to the relevant issues, so that comments can be elicited and an adequate record created.

WHEREFORE, for the foregoing reasons, the Commission should adopt the proposals set forth in the *NPRM* to streamline the FM and AM allocations process. It should not, however, adopt any numerical limit on the number of changes in one proposal or proceeding.

Respectfully submitted,

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